

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JEREMIAH LESLIE BEEBE,

Defendant-Appellee.

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UNPUBLISHED

November 30, 1999

No. 218191

Midland Circuit Court

LC No. 98-008659 AR

Before: Sawyer, P.J., and Hood and Whitbeck, JJ.

PER CURIAM.

The prosecution appeals by leave granted from the circuit court order's affirming the district court's order granting defendant's motion to suppress evidence. We reverse.

On July 11, 1997, Midland Police Officer Val Johnson presented an affidavit for a search warrant. The affidavit described the location to be searched as:

A single story brick, ranch style house with attached garage, facing North Saginaw Road and is the first house east of Reinberg's Used Cars commonly known as 1677 North Saginaw Road, Homer Township, Midland County, Michigan; any person or vehicle on the premises and the land surrounding the house.

The affidavit also contained the following facts which were offered in support of probable cause to search:

Affiant, Val Johnson, is a police officer with 7 years experience, and states: On July 7, 1997, he met with a confidential informant who informed Johnson of a large marijuana growth operation at 1677 North Saginaw Road, Midland County. This confidential informant has seen people purchase marijuana at 1677 North Saginaw Road. This confidential informant, on July 9 and 10, 1997, made two controlled buys at 1677 N. Saginaw. Prior to each buy, the confidential informant was searched by Johnson. According to the confidential informant, the following person sold the marijuana: Justin William Koebnick; the room where the marijuana grows belongs to Jeremiah Beebe,

however, he apparently only is there on weekends; another person who lives there is Frank Yokam. As a result of this information, a Forward Looking Infrared surveillance was conducted. The results, of which there is a tape, shows a strong indication of a marijuana grow operation based upon the heat emitting from the east end of 1677 North Saginaw Road. The person who conducted the FLIR is Dick Mainprize of BAYANET.

A magistrate authorized the search warrant which was executed. Upon arriving at the residence, a hasp and lock were discovered on the door of the bedroom belonging to defendant.<sup>1</sup> Police officers broke down the bedroom door. Once inside the bedroom, a locked trapped door was discovered and opened, revealing the presence of a marijuana grow operation. Thirty-nine marijuana plants, power converters, grow bulbs, fertilizer, and a garden sprayer were recovered from this location.

Defendant moved to suppress the evidence. On remand, the district court held that police officers, upon discovering the lock on defendant's bedroom door, should have obtained an additional affidavit and search warrant to enter the room.<sup>2</sup> The circuit court affirmed, albeit on other grounds. The circuit court held that it was erroneous for the district court to examine the facts surrounding execution of the warrant rather than the document itself, but nonetheless affirmed because the conclusory information contained within the affidavit failed to satisfy MCL 780.653; MSA 28.1259(3). We granted the prosecution's application for leave to appeal.<sup>3</sup>

The prosecution argues that the search warrant and affidavit contained sufficient allegations of probable cause to search the entire residence, including areas of the residence controlled by defendant. We agree. When reviewing a magistrate's decision to issue a search warrant, this Court must examine the search warrant and underlying affidavit in a common-sense and realistic manner. *People v Darwich*, 226 Mich App 635, 636-637; 575 NW2d 44 (1997). Under the totality of the circumstances, this Court must then determine whether a reasonably cautious person could have concluded that there was a substantial basis for the magistrate's finding of probable cause. *Id.* at 637. When a person of reasonable caution would conclude that contraband or evidence of criminal conduct will be found in the place to be searched, probable cause for a search exists. *Id.* We review a lower court's findings of fact in deciding a motion to suppress evidence for clear error. *People v Head*, 211 Mich App 205, 209; 535 NW2d 563 (1995). However, we review de novo a lower court's ultimate decision regarding a motion to suppress. *People v Goforth*, 222 Mich App 306, 310 n 4; 564 NW2d 526 (1997).

In *People v Franks*, 54 Mich App 729, 731-732; 221 NW2d 441 (1974), a search warrant issued for an entire one and one-half story frame dwelling which allowed a search for drugs and drug paraphernalia following receipt of information from a reliable informant. The defendant was found in the southeast bedroom of the dwelling with a bag containing marijuana. The defendant alleged that the search warrant's failure to describe his room as a place to be search caused the execution on the warrant to be constitutionally defective. This Court held that a search warrant which fails to specify a known sub-unit is constitutionally defective. *Id.* at 732-733. However, because the defendant's dwelling appeared to be a one-family residence, the search warrant described, with sufficient particularity, the location to be searched. *Id.* at 736.

In the present case, defendant contends that police were on notice that his bedroom constituted a sub-unit of the residence because the search warrant expressly stated that the bedroom in which the plants were located belonged to defendant. However, in explaining the rationale behind the sub-unit or multiple occupant rule, the *Franks* Court stated:

For purposes of satisfying the Fourth Amendment, searching two or more apartments in the same building is no different than searching two or more completely separate houses. Probable cause must be shown for searching each house, or in this case, each apartment. If such cause is shown there is no reason for requiring a separate warrant for each resident. A single warrant may cover several different places or residences in a single building. But probable cause must be shown for searching each residence unless it be shown that, although appearing to be a building of several apartments, the entire building is actually being used as a single unit. [*Id.* at 733, quoting *United States v Hinton*, 219 F2d 324, 325 (CA 7, 1955).]

Even if we were to construe defendant's bedroom as a separate unit within the residence, probable cause to search both the residence and defendant's bedroom was presented in the affidavit. The affidavit identified the residence as the location from which controlled buys had occurred. Furthermore, the affidavit and a FLIR identified defendant's bedroom as the location from which marijuana was likely grown. There was no reason to obtain a search warrant for each individual occupant of the residence. *Id.* Accordingly, the district court's conclusion that a separate search warrant was required for defendant's bedroom was erroneous.

Alternatively, defendant argues that the circuit court properly determined that the affidavit failed to satisfy the requirements of MCL 780.653; MSA 28.1259(3). We disagree. MCL 780.653; MSA 28.1259(3) provides, in relevant part:

The magistrate's finding of reasonable or probable cause shall be based upon all the facts related within the affidavit made before him or her. The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:

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(b) If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable.

While the confidential informant, in the present case, was unnamed and his reliability was not set forth in the affidavit, it was established that he participated in two controlled buys with affiant Johnson which were successful. Those controlled purchases were sufficient to establish probable cause to issue the warrant. *Head, supra*. Additionally, independent investigation, through the FLIR, produced corroborating evidence of the informant's reliability by revealing that a marijuana grow operation was likely occurring in the area of the home occupied by defendant. *People v Stumpf*, 196 Mich App 218,

223; 492 NW2d 795 (1992). After reviewing the affidavit in a common-sense and realistic manner, we hold that there was a substantial basis for the magistrate to conclude that the informant spoke with personal knowledge and was credible and reliable. *Darwich, supra*.

Reversed and remanded for the district court to enter an order binding defendant over on the charges related to the seizure of the marijuana from his bedroom. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ William C. Whitbeck

<sup>1</sup> The hearing regarding defendant's motion to suppress consisted solely of the parties' arguments, and testimony regarding the knowledge of police officers' and any possessory interest in the residence by defendant was not presented. It appears that the parties entered into a stipulation in lieu of testimony, although the exact terms of the stipulation were unclear from the record. Although unclear, it appears that our recitation of the facts was undisputed for purposes of the motion.

<sup>2</sup> The district court initially held that the lock on the door indicated that defendant, as a part-time resident, sought privacy. Although not expressly stated, it appears that the district court concluded that the residence was a multi-unit residence which required separate warrants for each occupant. Therefore, the motion to suppress was granted because police should have obtained an additional search warrant for defendant's room. On appeal as of right, the circuit court remanded to the district court for factual findings. Additional factual findings were not made upon remand, rather the district court reiterated its conclusion based upon the "stipulation" previously entered into at the initial motion to suppress hearing.

<sup>3</sup> *People v Beebe*, unpublished order of the Court of Appeals, entered May 5, 1999 (Docket No. 218191).